

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

HUGH JARRATT and
JARRATT INDUSTRIES, LLC,

Plaintiffs,

v.

AMAZON.COM, INC., and
CT DISCOUNT STORE, INC.

Defendants.

Civil Action No.: 5:16-cv-05302-PKH

Jury Trial Demanded

CT DISCOUNT STORE, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, CT DISCOUNT STORE, INC., by its attorneys, CHESNEY & NICHOLAS, LLP, answers the Complaint of the plaintiffs upon information and belief as follows:

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as "1", "2" and "3".

AS TO JURISDICTION

2. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as "5", "6", "8" and "9" and refers all questions of law and fact to this Honorable Court.

3. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as "7", "10" and "11" as to CT DISCOUNT STORE, INC. and refers all questions of law and fact to this Honorable Court.

AS TO FACTUAL BACKGROUND

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Complaint designated as “12”, “13”, “14”, “15”, “16”, “17”, “20”, “25”, “26”, “27”, “28”, “29”, “30”, “36” and “37”.

5. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “18” and “19”.

6. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “21”, “22”, “23”, “24”, “34”, “35”, “38”, “39”, “40” and “41” as to CT DISCOUNT STORE, INC..

7. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “31” and “33” and refers all questions of law and fact to this Honorable Court.

8. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “32”, “42” and “43” as to CT DISCOUNT STORE, INC. and refers all questions of law and fact to this Honorable Court.

AS TO COUNT 1 – PATENT INFRINGEMENT

9. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered “1”, “2”, “3”, “4”, “5”, “6”, “7” and “8” to each and every allegation contained in the paragraph of the Complaint designated as “44”.

10. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “45”, “46”, “47” and “48” as to CT DISCOUNT STORE, INC..

11. Denies upon information and belief each and every allegation contained in the paragraph of the Complaint designated as “49” as to CT DISCOUNT STORE, INC. and refers all questions of law and fact to this Honorable Court.

12. Denies upon information and belief each and every allegation contained in the paragraph of the Complaint designated as “50” and refers all questions of law and fact to this Honorable Court.

AS TO COUNT 2 – UNFAIR TRADE PRACTICES (15USC 1125(a))

13. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered “1”, “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11” and “12” to each and every allegation contained in the paragraph of the Complaint designated as “51”.

14. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “52” and “54” as to CT DISCOUNT STORE, INC..

15. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “53”, “55” and “56” and refers all questions of law and fact to this Honorable Court.

AS TO COUNT 3 – COMMON LAW TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN OR DESCRIPTION

16. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered “1”, “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12”, “13”, “14” and “15” to each and every allegation contained in the paragraph of the Complaint designated as “57”.

17. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “58”, “59”, “60”, “61” and “67” as to CT DISCOUNT STORE, INC..

18. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “62”, “63”, “64”, “65”, “66” and “68” as to CT DISCOUNT STORE, INC. and refers all questions of law and fact to this Honorable Court.

**AS TO COUNT 4 – VIOLATION OF THE ARKANSAS LAW UNDER DECEPTIVE
TRADE PRACTICES ACT (ARK. CODE ANN. §4-88-101, et seq.)**

19. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered “1”, “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12”, “13”, “14”, “15”, “16”, “17” and “18” to each and every allegation contained in the paragraph of the Complaint designated as “69”.

20. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “70”, “70a”, “70b”, “73”, “74”, “75” and “76” as to CT DISCOUNT STORE, INC. and refers all questions of law and fact to this Honorable Court.

21. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as “71” and “72” as to CT DISCOUNT STORE, INC..

**AS TO COUNT 5 – TORTIOUS INTERFERENCE WITH
PROSPECTIVE BUSINESS RELATIONS**

22. Repeats and reiterates each and every denial contained in the paragraphs of this Answer and numbered “1”, “2”, “3”, “4”, “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12”, “13”, “14”, “15”, “16”, “17”, “18”, “19”, “20” and “21” to each and every allegation contained in the paragraph of the Complaint designated as “77”.

23. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Complaint designated as “78”.

24. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as "79", "81", "82", "83" and "84" as to CT DISCOUNT STORE, INC..

25. Denies upon information and belief each and every allegation contained in the paragraphs of the Complaint designated as "80", "85", "86", and "87" as to CT. DISCOUNT STORE, INC. and refers all questions of law and fact to this Honorable Court.

**AS AND FOR A FIRST, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That one or more defenses are founded upon documentary evidence.

**AS AND FOR A SECOND, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That in the interest of substantial justice, this action should be heard in another forum.

**AS AND FOR A THIRD, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That this Court lacks personal jurisdiction over the person of the defendant.

**AS AND FOR A FOURTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That the plaintiff has failed to mitigate and/or reduce their damages and losses, if any, as alleged in the Complaint.

**AS AND FOR A FIFTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

The plaintiff has failed to properly state a claim for enhanced damages.

**AS AND FOR A SIXTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That the applicable Statutes of Limitations pertaining to these types of claims and/or actions have expired. Therefore, this suit is barred as a matter of law as to the plaintiffs.

**AS AND FOR A SEVENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That the plaintiffs' actions are barred by the doctrine of laches.

**AS AND FOR AN EIGHTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That the plaintiffs should be equitably estopped from maintaining this lawsuit.

**AS AND FOR A NINTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That the plaintiffs herein are without standing to sue in the within action.

**AS AND FOR A TENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

That the plaintiffs are barred from seeking equitable relief because they have come to this Court with unclean hands.

**AS AND FOR AN ELEVENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

This answering defendant lacks sufficient information regarding the specific nature of plaintiffs' allegations of infringement (direct, contributory, by inducement, or otherwise), and, on this basis, asserts that it does not infringe and has not infringed (not directly, contributorily, by inducement, nor in any other way) literally or under the doctrine of equivalents any claim of the '187 Patent.

**AS AND FOR A TWELFTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

The claims of the '187 Patent are invalid for failure to satisfy one or more of the requirements of Title 35 of the United States Code including but not limited to §§ 101, 102, 103, 112 and 132.

**AS AND FOR A THIRTEENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

Plaintiffs' claims of infringement under the '187 Patent are barred, in whole or in part, by the doctrines of waiver, acquiescence and/or consent.

**AS AND FOR A FOURTEENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

The claim of the '187 patent is invalid under 35 U.S.C. §§ 101, 102, 103, 112, and/or 171.

**AS AND FOR A FIFTEENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

CT DISCOUNT STORE, INC. has not infringed, and currently does not infringe, any valid and enforceable claim of the '187 patent directly, indirectly, by contribution, by inducement, under the doctrine of equivalents, or in any other manner.

CT DISCOUNT STORE, INC. has not willfully infringed, and currently does not willfully infringe, any valid and enforceable claim of the '187 patent directly, indirectly, by contribution, by inducement, under the doctrine of equivalents, or in any other manner.

**AS AND FOR A SIXTEENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

The claims made in JARRATT's Complaint are barred on the basis that the claim of the '187 patent at issue is functional.

**AS AND FOR A SEVENTEENTH, SEPARATE, DISTINCT
AND COMPLETE AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANT ALLEGES:**

CT DISCOUNT STORE, INC. has just begun its investigations into the allegations set forth in JARRATT's First Amended Complaint, and as such, CT DISCOUNT STORE, INC.'S investigations are ongoing and discovery has not yet commenced. CT DISCOUNT STORE, INC. expressly reserves the right to assert and pursue additional defenses.

WHEREFORE, this answering defendant demands judgment dismissing the Complaint of the plaintiffs herein together with the costs and disbursements of this action.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Local Rule CV-38, defendant, CT DISCOUNTY STORE, INC. demands a jury trial of all issues triable to a jury in this action.



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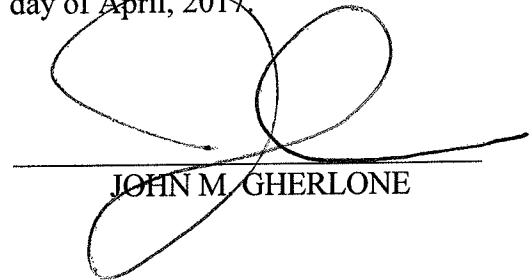
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5.2 on this the 10th day of April, 2017.



JOHN M. GHERLONE